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Via Online Submission

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets
File No. S7-05-20

Dear Commissioners,

We commend the U.S. Securities and Exchange Commission's (the "Commission") effort to consider and put forth the proposed changes to harmonize, simplify, and improve the exempt offering framework under the proposed rules, File No. S7-05-20 (the "Proposed Rules"). Crowdwise supports the Proposed Rules, with the only exceptions being in two areas:

1. Potential concerns and considerations regarding the use of Crowdfunding Vehicles under Regulation Crowdfunding (Reg CF), and
2. Potential concerns and considerations of the proposed explicit prohibition of using Simple Agreement for Future Equities (SAFEs) and other "non-traditional" securities under Reg CF.

We will elaborate on both of the above points in this letter. We are strongly in favor of all the other Proposed Rules, in particular, raising the Reg CF cap to \$5 million, revising the individual investor limits (with a minimum \$2,200 limit *per transaction*, as proposed in the Crowdfunding Professional Association's comment letter¹) for Reg CF non-accredited investors, removing the investment limits on accredited investors (as long as the new \$5 million cap is also adopted), and updating what is permitted under Reg CF for "Test-the-Waters" and Demo Day communications.

While the comment period officially ended on June 1, 2020, we were compelled to write in on these two areas of concern to give the Commission perspective from the investor community. The

¹Crowdfunding Professional Association - S7-05-20 comment letter submitted May 22, 2020:
<https://www.sec.gov/comments/s7-05-20/s70520-7227715-217009.pdf>

primary comments received on these topics were from Reg CF intermediaries, that, while we agree with their comments, may seem self-serving due to the nature of securities on their platforms and their business models.

Thus, we wanted to voice our support of those letters from an investor's perspective in the two areas above, which differ from the Commission's Proposed Rules.

We understand that the commission is not obligated to consider our comments, but we hope that these brief comments will help to provide additional perspective and improve the quality of the final adopted rules.

About Crowdwise

Crowdwise is an online startup investing community focused on helping both investors and entrepreneurs navigate equity crowdfunding by providing educational courses, investor tools and content. Through our courses and YouTube educational videos, we have educated thousands of Reg CF and Reg A+ investors and helped them learn everything that they need to know to start investing in the online capital markets through equity crowdfunding.

We have daily conversations with our diverse community of hundreds of crowdfunding investors and thus have gained unique insights into their desires and needs. In aggregate, our community has invested in thousands of crowdfunding deals, with me, personally, having invested in over eighty Reg CF and Reg A+ deals since 2016 as a non-accredited investor.

Eligibility of Crowdfunding Vehicles under Regulation Crowdfunding - Tax Concerns

While we applaud the effort of the Commission to remove some of the current barriers in the industry today (e.g. the Section 12(g) cap table issue for issuers), and while we overall support the effort and concept of using Special Purpose Vehicles (SPVs) in Reg CF, there are several unanticipated tax concerns that the proposed use of crowdfunding vehicles may give rise to that are unique to Reg CF.

Most worrisome is the fact that most SPVs would likely be organized as LLCs, and the potential tax burdens and costs for smaller crowdfunding investors would far outweigh the potential financial gains for the average small investor who invests only \$10 or \$100 per deal across a diverse portfolio.

Being partners in the LLC would necessitate the distribution of Schedule K-1 forms to each of these hundreds or thousands of investors each year, regardless of whether the offering issuer is a C-Corporation. Speaking from experience with a diverse portfolio of dozens of investments, it is

extremely time consuming to track down each and every LLC equity issuer and ensure that Schedule K-1 forms are received on time, if at all. This complication is so much of a potential burden and risk for LLC equity investors that it often becomes a deciding factor in terms of whether that \$10 or \$100 investment is worth the added tax burden. As more and more investors go through their first tax season after receiving Schedule K-1s and realize the potential tax implications they have introduced from their small investments, which most of them don't even realize today, then many investors may simply decide that Reg CF isn't worth their time for the added trouble and cost.

Furthermore, it is a massive burden on the issuers who would be responsible to issue the K-1s for the crowdfunding vehicle, especially when most of these Schedule K-1 forms have box amounts under \$10 total (and often may be \$0 or \$-1) for investors who are writing checks on the order of \$10-\$500. The increase in the logistical and financial costs on the issuer side may deter them from doing a Reg CF offering in the first place.

Despite many traditional angel investors specifically avoiding investments in LLCs for this very reason, the K-1 tax forms aren't as much of an issue in more traditional angel syndicates because:

1. The average investment amounts are so much higher that it may be worth the added time to deal with taxes for both the investor and the issuer (which is nearly identical in time to what it takes whether you invest \$10 or \$100,000),
2. Many accredited investors can afford to have a Certified Public Accountant or other finance professional do their taxes for them, which is *not* the case for the typical Reg CF investor,
3. The number of K-1s that must be issued in accredited syndicates is typically much smaller compared to the hundreds or thousands of Reg CF investors.

A second tax issue that would be introduced through the use of crowdfunding vehicles (and SPVs in general), which most investors aren't even aware of today, is that investing indirectly through an SPV would disqualify any investments that may have qualified for preferential tax treatment under Internal Revenue Code Sections 1202 (100% tax-free gains on Qualified Small Business Stock), 1045 (rollovers), and 1244 (losses). This trade-off is something that investors may be willing to accept if they believe that the benefits of having a "lead investor" for the SPV, such as that proposed in the Wefunder letter² (which we support), outweighs the loss of tax advantages, but it is another trade-off to be aware of.

If the SPVs are implemented as proposed in the current rules, there would need to be some coordination both on the issuer side to help reduce costs for issuers and ensure timely mailing of Schedule K-1s, and on the investor side to streamline the Schedule K-1 process. The Commission

² Nick Tommarello, CEO of Wefunder - S7-05-20 comment letter submitted May 28, 2020: <https://www.sec.gov/comments/s7-05-20/s70520-7246786-217248.pdf>

should potentially consider, perhaps in partnership with the IRS, some type of special form or relief for smaller crowdfunding investors who are becoming “partners” in these LLCs, for amounts that may be as little as \$10 each, since the current Schedule K-1 process is extremely ill-suited to large numbers of very small dollar amount investors. Otherwise, the introduction of SPVs without being well-thought-out and adjusted for the nuances of Reg CF could lead to increased costs and a reduction in interest by both issuers and investors.

Security types eligible under Regulation Crowdfunding should not be restricted

Second, we again commend the Commission’s efforts to both increase access to capital while at the same time ensuring appropriate investor protections are in place. However, we firmly believe that prohibiting specific types of securities under Reg CF, such as SAFEs, would not be in the best interest of either of the Commission’s aforementioned objectives.

Without repeating too much of what was already well-said in the letters from Wefunder and Republic³ (which we fully support from an investor perspective), speaking as an investor myself and as someone who has worked directly with and educated hundreds of crowdfunding investors, a SAFE is not the real issue that is trying to be addressed.

Some of the perceived problematic terms that are perhaps more *common* in SAFEs are “repurchase rights” or “redemption features” that allow a company or future investor to buy out crowdfunding investors. However, repurchase rights are not exclusive to SAFEs, as there are numerous Common Stock and other “traditional” securities offerings that have repurchase rights available today. Thus, as proposed in the comment letter from Vezzit, Inc⁴, “If there are inherent problems with SAFEs, then they should be dealt with specifically.”

One potential way to address this would be coming up with the list of potentially risky or problematic deal terms and then ensuring that issuers and portals are required to disclose those terms to investors, as Republic does today. In the end, however, we believe it is key that the ultimate decision of whether to invest is still left up to the investors. If investors still decide to invest despite those terms - as I did with a SAFE that just executed the repurchase rights clause this past week - then they are doing so with the full knowledge of the risk and will take ownership of that outcome. If instead the Commission tries to do all the work of protecting investors for them, then many investors may become more accustomed to overlooking deal terms and assuming that only “favorable” terms will be offered (since “unfavorable” security types would be prohibited), which takes the

³Republic.co - S7-05-20 comment letter submitted June 1, 2020:
<https://www.sec.gov/comments/s7-05-20/s70520-7258471-217640.pdf>

⁴Vezzit, Inc - S7-05-20 comment letter submitted June 1, 2020:
<https://www.sec.gov/comments/s7-05-20/s70520-7258832-217616.pdf>

responsibility and ownership off the plate of the investor and may result in more negative perceived outcomes than if an investor had made the informed decision themselves.

In his book *Range*, David Epstein argues that generalists in today's world are more successful than specialists because they are able to tinker and experiment (breadth) for a long time before later focusing on a particular problem or field and going deep (depth). He says, "Whether chemists, physicists, or political scientists, the most successful problem solvers spend mental energy figuring out what type of problem they are facing before matching a strategy to it, rather than jumping in with memorized procedures."

In a similar fashion, we feel that we are still very much in the early days of Regulation Crowdfunding and that the protections that are already in place are sufficient, as demonstrated by the zero instances of fraud since May 2016⁵. We are still in that learning and experimenting mode and should be encouraging *more* of it, within reason, so that we can better understand what the actual problems are that we're facing and what the best ways to attack those problems are.

Reg CF could and should be used as more of an opportunity for innovation, not only for itself, but for all capital formation. Before trying to impose new restrictions, we should have data that demonstrates A) that we actually have an issue that needs to be dealt with, and B) that the proposed solution is believed to alleviate that issue. In the case of SAFEs and other "non-traditional" securities such as revenue-sharing agreements, we don't believe that we have either today.

Furthermore, putting unnecessary restrictions on the types of securities offered, which may not even add to investor protections, would only create a *larger* divide and inequality between the types of investment opportunities available to Main Street investors versus those opportunities available to accredited investors in the private markets under Regulation D and other offerings.

Once again, we are grateful for the opportunity to comment on the proposed changes. Should you require any additional information or perspective, we are more than willing to be of service.

Sincerely,



Brian Belley

Founder and Managing Member - Crowdwise, LLC

⁵2019 Report to the Commission - Regulation Crowdfunding:
https://www.sec.gov/files/regulation-crowdfunding-2019_0.pdf